

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of Fitzpatrick et al.

Art Unit 3622

Serial No. 09/840,648

Filed 04/23/2001

Confirmation No. 5040

For METHOD AND SYSTEM FOR ELECTRONICALLY SELECTING, MODIFYING, AND  
OPERATING A MOTIVATION OR RECOGNITION PROGRAM

Examiner John W. Van Bramer

**APPEAL BRIEF**

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Examiner John W. Van Bramer

January 28, 2008

**APPEAL BRIEF**

This is an appeal from the final rejection of the claims of the above-referenced application made in the Final Office action dated **June 27, 2007**. A Notice of Appeal was filed on **October 26, 2007**.

The appeal brief fee in the amount of \$510.00 is submitted herewith.

**I. REAL PARTY IN INTEREST**

The real party in interest in connection with the present appeal is Maritz Inc. of 1375 North Highway Drive, Fenton, Missouri 63099, a corporation of the state of Missouri, owner of 100 percent interest in the pending application.

**II. RELATED APPEALS AND INTERFERENCES**

Appellant is unaware of any pending appeals or interferences which may be related to, directly affect or be directly affected by, or have a bearing on, the Board's decision in the pending appeal.

**III. STATUS OF CLAIMS**

Claims 1-7, 15, 24, 39, 52, 53, 55, 60 and 61, as set forth in the Claims Appendix, are currently pending in the application for consideration. Claims 8-14, 16-23, 25-38, 40-51 and 54 have been canceled.

Claims 1-7, 15, 24, 39, 52, 53, 55, 60 and 61 stand rejected. The rejection of independent claims 1 and 24, 55 and 61 are being appealed.

**IV. STATUS OF AMENDMENTS**

Amendment E was filed after final and entered by the Examiner. Amendment E canceled claims 56-59.

Amendment F was filed after filing the notice of appeal and has not been acted upon by the Examiner. Amendment F amends claims 55 and 61 to provide antecedent basis for the first modified program and the second modified program.

**V. SUMMARY OF CLAIMED SUBJECT MATTER**

The following summary correlates claim elements to embodiments described in the application specification, but does not in any manner limit claim interpretation. Rather, the following summary is provided only to facilitate the Board's understanding of the subject matter of this appeal.

**Brief Overview of Claim 1:**

**Independent claim 1 is directed to a method for allowing a first customer to create an individual, modified motivation or recognition first program. (Application, page 9, line 30 - page 10, line 2; FIG. 1, reference character 126). The method also allows a second customer to create an individual, modified motivation or recognition second program having second participants. (Application, page 9, line 30 - page 10, line 2; FIG. 1, reference character 126). Both the modified first program and the modified second program are executed by the same program processor. (Application, page 14, lines 11-17; FIG. 1, reference character 108).**

**Summary of Claim 1:**

The first program permits the first participants to access the first program via first participant processors and to earn awards through the first program on the basis of the first participants' performance. (Application, page 10, lines 14-17; FIG. 1, reference character 120). The first program of the first customer operates according to preferences selected by the first customer. (Application, page 12, lines 30-33).

The second program permits the second participants to access the second program via second participant processors and to earn awards through the second program on the basis of the second participants' performance. (Application, page 10, lines 14-17; FIG. 1, reference character 120). The second program of the second customer operates according to preferences selected by the second customer. (Application, page 12, lines 30-33).

The first customer is allowed to electronically access via a first customer processor a browsable catalog of predefined programs stored in a storage device connected to a program processor. (Application, page 10, lines 31-35; FIG. 3, reference character 202). The first customer is allowed to electronically select via the first customer processor a first one of the predefined programs stored in the storage device. (Application, page 10, lines 31-35; FIG. 3, reference character 202). The first customer is allowed to electronically modify via the first customer processor at least one component of the selected first predefined program. (Application, page 11, lines 8-12; FIG. 5, reference character 505). The first customer is allowed to electronically store via the first customer processor the modified first program in the storage device for access by the first customer. (Application, page 11, lines 8-12; FIG. 5, reference character 506).

The second customer is allowed to electronically access via a second customer processor the browsable catalog of predefined programs stored in the storage device connected to the program processor. (Application, page 10, lines 31-35; FIG. 3, reference character 202). The second customer is allowed to electronically select via the second customer processor a second one of the predefined programs stored in the storage device. (Application, page 10, lines 31-35; FIG. 3, reference character 202). The second customer is allowed to electronically modify via the second customer processor at least one component of the selected second predefined program. (Application, page 11, lines 8-12; FIG. 5, reference character 505). The second customer is allowed to electronically store via the second customer processor the modified

second program in the storage device for access by the second customer. (Application, page 11, lines 8-12; FIG. 5, reference character 506).

The first customer is allowed to operate the modified first program via the program processor, and the second customer is allowed to operate the modified second program via the program processor. (Application, page 13, lines 1-10; FIG. 1, reference character 102). The first and second participant processors and the first and second customer processors are remote from the program processor and remote from the storage device connected to the program processor. (Application, page 12, lines 4-11; FIG. 1, reference characters 112, 108, 104). The first customer's participants are provided with access via the first participant processors to the modified first program stored in the storage device, and the second customer's participants are provided with access via the second participant processors to the modified second program stored in the storage device. (Application, page 14, lines 11-17; FIG. 1, reference characters 120, 106, 112). The modified first and second programs are executed by the program processor. (Application, page 14, lines 11-17; FIG. 1, reference character 108).

#### **Brief Overview of Claim 24:**

**Independent claim 24 is directed to a system for allowing multiple customers to each create an individual, modified motivation or recognition program via a customer processor. (Application, page 10, lines 31-35; FIG. 3, reference character 202). Each program is associated with a selected business challenge. (Application, page 18, line 34-page 19, line 2; FIG. 4, reference characters 410, 412, 414, 416). The modified programs of multiple customers are executed by the same program processor. (Application, page 14, lines 11-17; FIG. 1, reference character 108).**

#### **Summary of Claim 24:**

Each program has participants and each program permits the participants to access their program via a participant processor and to earn awards through their program on the basis of the participants' performance. (Application, page 10, lines 14-17; FIG. 1, reference character 120). Each program of a particular customer operates according to preferences selected by the particular customer. (Application, page 12, lines 30-33).

The system comprises a storage device and a program processor. (FIG. 1, reference

characters 112, 108). The program processor is connected to the storage device. (FIG. 1, reference characters 112, 108). The storage device stores a program for controlling the program processor. (Application, page 11, lines 21-24; FIG. 1, reference character 112, 108). The program processor is operative with the program. (Application, page 11, lines 21-24; FIG. 1, reference character 112, 108). The participant processor and the customer processor are remote from the program processor and remote from the storage device. (Application, page 12, lines 4-11; FIG. 1, reference characters 112, 108, 104).

The program processor electronically provides each customer access to a browsable catalog of predefined programs stored in the storage device. (Application, page 10, lines 14-17; FIG. 1, reference character 110). Each program is associated with a business challenge. (Application, page 18, line 34- page 19, line 2; FIG. 4, reference characters 410, 412, 414, 416). The program processor allows each customer to electronically select a business challenge. (Application, page 18, line 34- page 19, line 2; FIG. 4, reference characters 410, 412, 414, 416). The predefined programs associated with the business challenge are presented to the customer and are designed to promote the selected business challenge. (Application, page 18, line 34- page 19, line 2; FIG. 4, reference characters 410, 412, 414, 416). The program processor allows each customer to electronically select one of the presented predefined programs stored in the storage device. (Application, page 10, lines 31-35; FIG. 3, reference character 202).

Additionally, the program processor allows each customer to modify at least one component of the selected predefined program. (Application, page 11, lines 8-12; FIG. 5, reference character 505). The program processor allows each customer to electronically store the modified program in the storage device for access by such customer. (Application, page 11, lines 8-12; FIG. 5, reference character 506). The program processor allows each customer to electronically create or review a proposal and/or invoice relating to the modified program. (Application, page 23, lines 14-17; FIG. 5, reference character 508). The program processor allows each customer to operate the modified program. (Application, page 13, lines 1-10; FIG. 1, reference character 102). And, the program processor provides each customer's participants with access to the modified program stored in the storage device. (Application, page 14, lines 11-17; FIG. 1, reference characters 120, 106, 112). The modified program is executed by the program processor. (Application, page 14, lines 11-17; FIG. 1, reference character 108).

**Brief Overview of Claim 55:**

**Independent claim 55 is directed to a method for allowing multiple customers to each create an individual, modified motivation or recognition program having individualized rules structures. (Application, page 9, line 30 - page 10, line 2; FIG. 1, reference character 126, 120). The first customer and the second customer are allowed to each electronically select via their customer processor a rules structure of the selected predefined program. (Application, page 16, lines 13-29; FIG. 4, reference characters 406, 418, 420). The modified programs are executed by the same storage device. (Application, page 14, lines 11-17; FIG. 1, reference character 108).**

**Summary of Claim 55:**

The programs of the multiple customers are supplied by a program supplier. (FIG. 1). Each program permits the participants to access their program via a participant processor and to earn awards through the program in which they participate on the basis of the participants' performance. (Application, page 9, line 31 - page 10, line 8; FIG. 1, reference character 126, 106, 120). Each program of a particular customer operating according to preferences selected by the particular customer. (Application, page 12, lines 30-33).

A first customer via a first customer processor and a second customer via a second customer processor are allowed to electronically access a browsable catalog of predefined programs stored in a storage device connected to a program processor. (Application, page 10, lines 31-35; FIG. 3, reference character 202). The storage device and the program processor are remote from the customer processor and remote from the participant processor. (Application, page 12, lines 4-11; FIG. 1, reference characters 112, 108, 104). The first customer's access and program is independent of the second customer's access and program. (FIG. 1).

The first customer and the second customer are allowed to each electronically select one of the predefined programs stored in the storage device via their customer processor. (Application, page 10, lines 31-35; FIG. 3, reference character 202). The first customer's selection is independent of the second customer's selection. The first customer and the second customer are allowed to each electronically select via their customer processor a rules structure of the selected predefined program. (Application, page 16, lines 13-29; FIG. 4, reference characters 406, 418, 420). The rules structure defines the manner in which awards are earned by

the first and second customer's participants. (Application, page 17, lines 5-6). The first customer's selection of the rules structure is independent of the second customer's selection of the rules structure.

The first customer is allowed to electronically store the first modified program in the storage device for access by the first customer via the first customer processor. (Application, page 11, lines 8-12; FIG. 5, reference character 506). The second customer is allowed to electronically store the second modified program in the storage device for access by the second customer via the second customer processor. (Application, page 11, lines 8-12; FIG. 5, reference character 506). The first customer is allowed to operate the first modified program via the first customer processor. (Application, page 13, lines 1-10; FIG. 1, reference character 102). The second customer is allowed to operate the second modified program via the second customer processor. (Application, page 13, lines 1-10; FIG. 1, reference character 102). The operation of the first modified program is independent of the second modified program. The first customer's participants are provided with access via their participant processor to the first modified program stored in the storage device. (Application, page 14, lines 11-17; FIG. 1, reference characters 120, 106, 112). The modified program is executed by the program processor, and the first customer's participants earn awards based on the rules structures of the first modified program. (Application, page 14, lines 11-17; FIG. 1, reference character 108).

The second customer's participants are permitted with access via their participant processor to the second modified program stored in the storage device. (Application, page 14, lines 11-17; FIG. 1, reference characters 120, 106, 112). The modified program is executed by the program processor. The second customer's participants earn awards based on the rules structures of the second modified program. (Application, page 14, lines 11-17; FIG. 1, reference character 108). Access by the first customer's participants to the first modified program is independent of access by the second customer's participants to the second modified program.

#### **Brief Overview of Claim 61:**

**Independent claim 61 is directed to a method for allowing multiple customers to each create an individual, modified motivation or recognition program having individualized rules structures. (Application, page 9, line 30 - page 10, line 2; FIG. 1, reference character 126, 120). Each program is associated with a selected business**

**challenge. (Application, page 18, line 34- page 19, line 2; FIG. 4, reference characters 410, 412, 414, 416). The first customer and the second customer are allowed to each electronically select via their customer processor a rules structure of the selected predefined program. (Application, page 16, lines 13-29; FIG. 4, reference characters 406, 418, 420). The modified programs are executed by the same storage device. (Application, page 14, lines 11-17; FIG. 1, reference character 108).**

**Summary of Claim 61:**

The programs of the multiple customers are supplied by a program supplier, each program permitting the participants to access their program via a participant processor and to earn awards through the program in which they participate on the basis of the participants' performance. (Application, page 9, line 31 - page 10, line 8; FIG. 1, reference character 126, 106, 120). Each program of a particular customer operates according to preferences selected by the particular customer. (Application, page 12, lines 30-33).

A first customer via a first customer processor and a second customer via a second customer processor are allowed to electronically select a business challenge from a plurality of business challenges. (Application, page 18, line 34- page 19, line 2; FIG. 4, reference characters 410, 412, 414, 416). Each business challenge is associated with one or more predefined programs. (Application, page 18, line 34- page 19, line 2; FIG. 4, reference characters 410, 412, 414, 416). The predefined programs associated with the business challenge are presented to the customer and are designed to promote the selected business challenge. (Application, page 18, line 34- page 19, line 2; FIG. 4, reference characters 410,412,414,416).

The predefined programs are stored in a storage device connected to a program processor. (Application, page 10, lines 31-35; FIG. 3, reference character 202). The storage device and the program processor are remote from the customer processor and remote from the participant processor. (Application, page 12, lines 4-11; FIG. 1, reference characters 112, 108, 104). The first customer's access and program is independent of the second customer's access and program. The first customer and the second customer are allowed to each electronically select one of the presented predefined programs stored in the storage device via their customer processor. The first customer's selection is independent of the second customer's selection.

The first customer and the second customer are allowed to each electronically select via

their customer processor a rules structure of the selected predefined program. (Application, page 10, lines 31-35; FIG. 3, reference character 202). The rules structure defines the manner in which awards are earned by the first and second customer's participants. (Application, page 17, lines 5-6). The first customer's selection of the rules structure is independent of the second customer's selection of the rules structure. The first customer is allowed to electronically store the first modified program in the storage device for access by the first customer via the first customer processor. (Application, page 11, lines 8-12; FIG. 5, reference character 505). The second customer is allowed to electronically store the second modified program in the storage device for access by the second customer via the second customer processor. (Application, page 11, lines 8-12; FIG. 5, reference character 505).

The first customer is allowed to operate the first modified program via the first customer processor. (Application, page 13, lines 1-10; FIG. 1, reference character 102). The second customer is allowed to operate the second modified program via the second customer processor. (Application, page 13, lines 1-10; FIG. 1, reference character 102). The operation of the first modified program is independent of the second modified program.

The first customer's participants are provided with access via their participant processor to the first modified program stored in the storage device. (Application, page 14, lines 11-17; FIG. 1, reference characters 120, 106, 112). The modified program is executed by the program processor and the first customer's participants earn awards based on the rules structures of the first modified program. (Application, page 14, lines 11-17; FIG. 1, reference character 108). The second customer's participants are provided with access via their participant processor to the second modified program stored in the storage device. (Application, page 14, lines 11-17; FIG. 1, reference characters 120, 106, 112). The modified program is executed by the program processor and the second customer's participants earn awards based on the rules structures of the second modified program. (Application, page 14, lines 11-17; FIG. 1, reference character 108). Access by the first customer's participants to the first modified program is independent of access by the second customer's participants to the second modified program.

**VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL**

A. Appellant appeals the rejections of claims 1, 3-7, 15, 24, 52, 53, 55, 56 and 61 under 35 U.S.C. §102(e) as being anticipated by U.S. Patent Number 6,061,660 (Eggleston).

**VII. ARGUMENT--The claims are patentable and not anticipated by Eggleston**

A claim is anticipated only if each and every element as set forth in the claim is disclosed, either expressly or inherently in a single prior art reference.<sup>1</sup> Appellant submit that each and every element as set forth in the recited claims is not found, either expressly or inherently in the Eggleston reference. In particular, Eggleston *only* illustrates that each customer can download and operate their modified program via their processor and fails to disclose multiple programs by various sponsors on the same host, as recited by claims 1 and 24. In addition, Eggleston *only* illustrates the modification of eligibility rules and fails to disclose a selectable rules structure in combination with multiple programs on the same storage device and executed by the same program processor, as recited by claims 55 and 61.

Thus, the Eggleston reference does not anticipate the claims.

**A. Summary of Eggleston**

Eggleston teaches a method for providing incentive programs over a computer network. In particular, the incentive program is downloaded or transmitted to the sponsor for installation and operation at the sponsor's own site after the incentive program is purchased. (Eggleston, FIG. 10, reference character 368; FIG. 11, reference character 388; column 14, lines 50-53; column 19, lines 14-19; and column 19, lines 44-48). For example, Eggleston discloses "[w]hether the sponsor purchases a pre-packaged incentive program or chooses to build an incentive program, the completed incentive program is downloaded to the sponsor for installation on a web site of the sponsor." (Eggleston, column 14, lines 50-53). Eggleston teaches that once the incentive program has been downloaded and installed on the sponsor's own site, the sponsor provides a link to the host. (Eggleston, column 19, lines 20-21 and 49-50; column 30, lines 6-9). For example, at column 14, lines 53-56, Eggleston teaches "[t]he sponsor database is updated to reflect the presence of the new incentive program, and the sponsor site

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<sup>1</sup> M.P.E.P. § 2131. *See also Schering Corp. v. Geneva Pharmaceuticals*, 339 F.3d 1373, 1379 (Fed. Cir. 2003) (citing *Verdegaal Bros., Inc. v. Union Oil Co. of Cal.*, 814 F.2d 628, 631 (Fed. Cir. 1987) ).

194 is updated to include a link to the new incentive program." Next, the host system updates the consumer directory of the consumer site to link to the incentive program installed on the sponsor's own site. (Eggleston, column 15, line 66 - column 16, line 2; column 19, lines 49-52; column 26, lines 62-65) For example, Eggleston discloses "the host computer updates the consumer home page of the consumer site to reflect the presence of a new incentive program and a link to the new incentive program." (Eggleston, column 19, lines 26-29) In other words, Eggleston teaches that a sponsor (1) purchases incentive programs from the sponsor site of the host, (2) downloads the purchased program to the sponsor's own server, and (3) provides a link to the host, as a result, the consumer can access the incentive program on the sponsor's own web server from a HTML link in the consumer directory of the consumer site of the host.

#### B. Claims 1 and 24

Claim 1 is directed to a method for a first customer and a second customer to create individual modified motivation or recognitions programs where each customer's participants access their modified program stored in the same storage device connected to the program processor and where the accessed programs are executed by the same program processor, and not executing by the individual customer processors. Claim 24 is directed to a system for allowing multiple customers to create individual modified motivation or recognitions programs where each customer's participants access the modified program stored in the same storage device connected to the program processor and executed by the same program processor, and not executing by the individual customer processors.

Appellant submits that claims 1 and 24 are unanticipated by and patentable over Eggleston in that Eggleston fails to disclose or teach:

**allowing the first customer to operate the modified first program via the program processor, and allowing the second customer to operate the modified second program via the program processor, wherein the first and second participant processors and the first and second customer processors are remote from said program processor and remote from the storage device connected to the program processor; and**

**providing the first customer's participants with access via the first participant processors to the modified first program stored in the storage device, and providing the second customer's participants with access via the second participant processors to the modified second program stored in the storage device, said modified first and second programs executed by the program processor.**

(Appendix, claim 1 at lines 34-43).

**a storage device; and**  
**a program processor ...operative ...:**  
**to electronically provide to each customer access to a browsable catalog of predefined programs stored in the storage device, each program associated with a business challenge; ...**  
**to allow each customer to electronically select one of the presented predefined programs stored in the storage device;**  
**to allow each customer to modify at least one component of the selected predefined program;**  
**to allow each customer to electronically store the modified program in the storage device for access by such customer; ...**  
**said modified program executed by the program processor.**  
(Appendix, claim 24 at lines 81-101).

One advantage to the recited method and system over Eggleston is that the administrator of the program processor is able to manage all programs of all customers via access to the program processor. In contrast, in Eggleston, the administrator would be required to access each customer processor to manage all programs of all customers. Thus, in the event that the administrator wants to make a change to all programs, according to the recited invention, the change could be made by accessing the program processor instead of accessing each customer processor.

1. Contrary to Examiner's Arguments, Eggleston fails to disclose multiple programs by various sponsors on the same host.

In the Response to Arguments on page 20 of the final Office action, the Examiner asserts that column 5, lines 46-55; column 10, lines 1-54; column 12, lines 39-48; column 14, lines 6-65; column 17, lines 25-50; and column 32, lines 53-64 of Eggleston teach the incentive program of various sponsors are stored and executed on the host machine. The Examiner also asserts that column 6, lines 13-19; column 6, lines 31-46; column 6, line 53 through column 7 line 6; and column 7, line 54 through column 8, line 20; and column 12, lines 38-48 of Eggleston disclose additional support and definitions that would allow one of ordinary skill to determine that the remote host is able to operate the incentive program selected by the sponsor.

First, column 14, lines 6-65 teaches away from the Examiner's assertion by suggesting purchasing and downloading of the program. For example, column 14, lines 50-53 indicates that the host does not operate/execute the incentive program by disclosing "whether the sponsor

purchases a pre-packaged incentive program or chooses to build an incentive program, the completed incentive program is **downloaded** to the sponsor for installation on a web site of the sponsor" and that "the sponsor site is updated to include a link to the new incentive program." (Emphasis added). And, column 14, lines 5-19 generally disclose a sponsor registering at the sponsor site of the host. Column 14, lines 20-25 generally disclose that a registered sponsor may provide links (e.g., a URL) to a pre-existing incentive program sites or purchase incentive programs from the host. Lastly, column 14, lines 25-50 generally describe the process of purchasing an incentive program from the host.

Second, the other references in Eggleston cited by the Examiner are silent as where the operating/executing of the programs occurs. For example, column 5, lines 46-55 teach that the present invention "permits sponsors to build, buy, store, modify, offer, track and administer incentive programs", but not operating or executing the incentive program on the host machine. The Examiner is using hindsight garnered from the claims to read into Eggleston that multiple programs of multiple customers can be executed on the same host machine. Similarly, column 10, lines 1-54 teach a general client server model of distributed computing over the internet. Column 12, lines 39-48 describes a consumer site which provides a directory of links to incentive programs provided by the host system or provided by a third party, but fails to address where the "provided" incentive programs are executed or operated. Column 17, lines 25-50 discloses a method for a sponsor to log into the sponsor site of the host. And, column 32, lines 53-64 standalone software may be used to create the incentive program and the code may be stored in a database. But, the cited reference fails to disclose how or where the code is executed or operated, only stored.

Third, the references in Eggleston which the Examiner cites do not provide additional support that would allow one of ordinary skill to determine that the remote host is able to operate the incentive program selected by the sponsor. Again, the references are silent with respect to operation/execution of the incentive program. For example, column 6, lines 13-19 teaches that sponsor may list incentive programs on an internet site, obtain incentive programs from the host, build incentive programs using software of the host, associated prizes with incentive programs offered through the listing of the site, and the sponsor may fulfill awards won by consumers. Column 6, lines 31-46 generally discloses that consumers may participate in incentive programs from a plurality of sponsors. Column 6, line 53 through Column 7, line 6 generally discloses the

process for generating an incentive program, but not operation or execution of the incentive program. And, column 7, line 54 through column 8, line 20 generally defines the terms host and sponsor, but does not address the operation or execution of an incentive program.

2. Eggleston only illustrates that each customer can download and operate their modified program via their processor.

Eggleston teaches in detail five (5) embodiments where the program is downloaded or mailed to the sponsor for installation at the sponsor's site and does not disclose a single embodiment where the program is operated on the host computer. (See, (1) Fig. 10; Column 14, lines 50-65; (2) Fig. 10; Column 19, lines 14-17; (3) Fig. 10; Column 19, lines 18-19; (4) Column 29 line 67 - Column 30 line 9; and (5) Fig. 11; Column 32, lines 37-41.)

Notably, Eggleston does not teach or disclose any embodiments where the incentive program purchased by a sponsor is installed or executed on the sponsor site of the host system or elsewhere on the host system. In contrast, Eggleston repeatedly teaches that a purchased incentive program is downloaded to the sponsor's own site and not the sponsor site located on the host system. When read in the light of the specification, Eggleston teaches that a sponsor (1) purchases incentive programs from the sponsor site of the host, (2) downloads the purchased program to the sponsor's own server, and (3) provides a link to the host so that the consumer can access the incentive program on the sponsor's own web server from a HTML link in the consumer directory of the consumer site of the host.

For example, at column 14, lines 50-53, Eggleston teaches "[w]hether the sponsor purchases a pre-packaged incentive program or chooses to build an incentive program, the completed incentive program is **downloaded** to the sponsor for installation on a web site of the sponsor." And, at column 19, lines 14-17, Eggleston teaches "at a step 368 the pre-packaged incentive program is transmitted to the sponsor by electronic mail or other file transfer protocol, so that the sponsor can **download** the incentive program on the sponsor's own server." And, at column 19, lines 17-19, Eggleston teaches "the code could be mailed on a disk with instructions for **downloading** into the sponsor's own site." (Also see FIG. 10.) At column 19, lines 44-48, Eggleston teaches "in a step 388 the incentive program that was built is transmitted to the sponsor by conventional means such as electronic mail, disk or file transfer, so that the sponsor can **install** the new incentive program **on the sponsor's server** for the sponsor's own site. (Also

see FIG. 11.) Further, at column 29, line 67 to column 30, line 3, Eggleston discloses "[o]nce payment is confirmed, an application program sends a file containing the incentive program by electronic mail to the sponsor, who can then **download** the incentive program at the sponsor's site." Lastly, at column 32, lines 37- 41, Eggleston discloses "[o]nce payment is confirmed, an application program sends a file containing the incentive program by electronic mail to the sponsor, who can then **download** the incentive program at the sponsor's site." (Emphasis added.)

Eggleston consistent with the above then teaches that, after the incentive program has been downloaded and installed on the sponsor's own site, the sponsor provides a link to the host. (Eggleston, column 19, lines 20-21 and 49-50; column 30, lines 6-9). For example, at column 14, lines 53-56, Eggleston teaches "[t]he sponsor database is updated to reflect the presence of the new incentive program, and the sponsor site 194 is updated to include a link to the new incentive program."

Next, the host system updates the consumer directory of the consumer site to link to the incentive program installed on the sponsor's own site. (Eggleston, column 15, line 66 - column 16, line 2; column 19, lines 49-52; column 26, lines 62-65). For example, Eggleston discloses "the host computer updates the consumer home page of the consumer site to reflect the presence of a new incentive program and a link to the new incentive program." (Eggleston, column 19, lines 26-29).

In contrast, independent claims 1 and 24 recite the combination of multiple programs by various sponsors on the same host system.

### Claim 1

Claim 1 recites:

A method for allowing a first customer to create an individual, modified motivation or recognition first program having first participants..., said method for allowing a second customer to create an individual, modified motivation or recognition second program having second participants ..., said method comprising the steps of:

...  
allowing the first customer to operate the modified first program via the program processor, and allowing the second customer to operate the modified second program via the program processor, wherein the first and second participant processors and the first and second customer processors are remote from said program processor and remote from the storage device connected to the program processor; and

providing the first customer's participants with access via the first participant processors to the modified first program stored in the storage device, and providing the

second customer's participants with access via the second participant processors to the modified second program stored in the storage device, **said modified first and second programs executed by the program processor.** (Appendix, lines 1-13 and 34-43, Emphasis added.)

None of the references in Eggleston, taken individually or in combination, discloses or suggests the combination of these elements so that the modified programs of different customers are executed by the same program processor. Without teaching this combination of elements, Eggleston cannot anticipate claim 1.

The present invention allows a first and second customer "to operate the modified program via the program processor, and wherein the participant processor and the customer processor are remote from said program processor and remote from the storage device," as recited in claim 1 and shown in FIG. 1 and 10. (Also see, specification page 12, lines 12-13; FIG. 10, page 29, line 21- page 31, line 14). Furthermore, the operating software used to operate the program remains local to the program processor. For example, the first and second customers are allowed to "personalize follow-up promotions 1010 and schedule and launch communication cycles at 1012 by editing the content and frequency of any communications that are scheduled to be sent by the program processor." (FIG. 10, reference characters 1010, 1012; page 31, line 2-8).

Without a teaching for multiple independent customers to operate the modified program via the same program processor, and wherein the participant processor and customer processors are remote from said program processor and remote from the storage device, Eggleston cannot anticipate claim 1. Furthermore, since Eggleston discloses installation and operation at the sponsor's own site, Eggleston teaches away from the invention.

For at least these reasons, Appellant submits the cited reference does not teach or suggest each and every element of claim 1. As such, the rejection of claim 1 under 35 U.S.C. § 102(e) should be removed. Additionally, claims 2-7, 15, 39, 52 and 53 depend from claim 1 and are allowable for at least the same reasons as claim 1.

#### Claim 24

Claim 24 recites a system for allowing multiple customers to each create an individual, modified motivation or recognition program via a customer processor similar to claim 1. Claim 24 recites:

a storage device; and  
a program processor ...operative ...:

to electronically provide to each customer access to a browsable catalog of predefined programs stored in the storage device, each program associated with a business challenge; ...

to allow each customer to electronically **select** one of the presented predefined programs stored in the storage device;

to allow each customer to **modify** at least one component of the selected predefined program;

to allow each customer to electronically store the modified program in the storage device for access by such customer; ...

**said modified program executed by the program processor.**

(Appendix, lines 81-101, Emphasis added).

As explained above with respect to claim 1, without a teaching that each customer can select, modify and operate the modified program via the same program processor, where the participant processor and customer processors are remote from the program processor and remote from the storage device, Eggleston cannot anticipate claim 24.

For at least these reasons, Appellant submits the cited reference does not teach or suggest each and every element of claim 24. As such, the rejection of claim 24 under 35 U.S.C. § 102(e) should be removed. Additionally, claims 53 and 60 depend from claim 24 and are allowable for at least the same reasons as claim 24.

### C. Claims 55 and 61

Claim 55 is directed to a method for allowing a first customer and a second customer to create individual modified motivation or recognitions programs by selecting a rules structure of a predefined program where each customer's participants access the modified program stored in a storage device connected to the program processor and executed by the same program processor. Claim 61 is directed to a method for allowing a first customer and a second customer to create individual modified motivation or recognitions programs by selecting a business challenge and a rules structure of a predefined program where each customer's participants access the modified program stored in a storage device connected to the program processor and executed by the program processor.

Appellants submit that claims 55 and 61 are unanticipated by and patentable over Eggleston in that Eggleston fails to disclose or teach multiple programs on the same storage

device in combination with "allowing the first customer and the second customer to each electronically select via their customer processor a rules structure of the selected predefined program, said rules structure defining the manner in which awards are earned by the first and second customer's participants, wherein the first customer's modification is independent of the second customer's modification." (Appendix, claim 55 at lines 137-140, and claim 61 at lines 187-190).

1. Contrary to Examiner's Argument, Eggleston fails to disclose a selectable rules structure in combination with multiple programs on the same storage device and executed by the same program processor.

Claims 55 and 61 recite that the first and second programs are on the same storage device and are executed by the program processor (Appendix, claim 55 at lines 141-144 and 150-159, and claim 61 at lines 191-194 and 200-209). Claims 55 and 61 also recite that each customer selects a rules structure "defining the manner in which awards are earned by the first and second customer's participants." (Appendix, claim 55 at lines 137-140, and claim 61 at lines 187-190). Once again, by the Examiner's own admission in the final Action Eggleston is deficient. The Examiner notes on pages 20-21 of the final Office action:

However, column 35, line 4 through column 36 line 19 specifically disclose "the programs for a given incentive program are associated with incentive program rules", and that "any other eligibility rules can be entered by the sponsor in defining the eligibility."

However, Eggleston fails to select a rules structure and, in particular to select rules regarding earned rewards in combination with multiple programs on the same storage device and executed by the same program processor. At best, Eggleston teaches that eligibility rules can be modified. The Examiner also cite column 14, line 14 to column 15, line 15 in this regard on page 20 of the final action. However, this section merely teaches that the sponsor may select prizes, not a rules structure defining the manner in which awards are earned.

2. Eggleston only illustrates the modification of eligibility rules.

In contrast to Eggleston, independent claims 55 and 61 recite the combination of multiple programs by various sponsors on the same host system and further recite selecting via their

customer processor a rules structure of the selected program. The rules structure defines the manner in which awards are earned by the first and second customer's participants. Further, the first customer's modification is independent of the second customer's modification. Thus, modifying eligibility rules as illustrated Eggleston does not anticipate selecting the rules structure defining how awards are earned, as recited by claims 55 and 61.

### Claim 55

Claim 55 recites:

A method for allowing multiple customers to each create an individual, modified motivation or recognition program having participants, ..., each said program permitting the participants to access their program via a participant processor and to earn awards through the program in which they participate on the basis of the participants' performance, each said program of a particular customer operating according to preferences selected by the particular customer, said method comprising the steps of:

...

allowing the first customer and the second customer to each electronically select one of the predefined programs stored in the storage device via their customer processor, wherein the first customer's selection is independent of the second customer's selection;

allowing the first customer and the second customer to each electronically select via their customer processor a rules structure of the selected predefined program, said rules structure defining the manner in which awards are earned by the first and second customer's participants, wherein the first customer's modification is independent of the second customer's modification....

(Appendix, claim 55 at lines 121-127, and 134-140)

None of the references, taken individually or in combination, discloses or suggests these elements. Without teaching each element, Eggleston cannot anticipate claim 55.

For example, rules structures define the manner in which awards are earned by the participants and the customer can select the rules structure to reflect the individual needs of the customer. (Specification, page 17, lines 9-12). Sales contests may be based on rules structures such as: Hit and Win, Top Performer, Dollar One, Up To and Over, and Incremental Sales. (Specification, page 17, lines 18-21). In the Hit and Win rules structure, an objective is set and communicated to drive each participant and when the objective is reached, the participant earns the award. (Specification, page 17, lines 21-23). Additional rules structures may be accommodated as appropriate to promote other performance such as participant suggestions, safety, productivity, or presenteeism. (Specification, page 18, lines 11-14).

The Eggleston reference fails to teach or suggest "allowing the first customer and the second customer to each electronically select via their customer processor a rules structure of the selected predefined program" as recited in claim 55. For at least these reasons, Appellant submits the cited reference does not teach or suggest each and every element of claim 55. As such, the rejection of claim 55 under 35 U.S.C. § 102(e) should be removed.

### Claim 61

Claim 61 recites a method for allowing multiple customers to each create an individual, modified motivation or recognition program via a customer processor by selecting a rules structure similar to claim 55. Claim 61 recites:

A method for allowing multiple customers to each create an individual, modified motivation or recognition program having participants, ... each said program permitting the participants to access their program via a participant processor and to earn awards through the program in which they participate on the basis of the participants' performance, each said program of a particular customer operating according to preferences selected by the particular customer, said method comprising the steps of:

...

allowing the first customer and the second customer to each electronically select one of the presented predefined programs stored in the storage device via their customer processor, wherein the first customer's selection is independent of the second customer's selection;

allowing the first customer and the second customer to each electronically select via their customer processor a rules structure of the selected predefined program, said rules structure defining the manner in which awards are earned by the first and second customer's participants, wherein the first customer's modification is independent of the second customer's modification....

(Appendix, claim 61 at lines 168-174, and 184-190)

As explained above with respect to claim 55, without a teaching of the first customer and the second customer to each electronically select via their customer processor a rules structure of the selected predefined program, Eggleston cannot anticipate claim 61.

For at least these reasons, Appellant submits the cited reference does not teach or suggest each and every element of claim 61. As such, the rejection of claim 61 under 35 U.S.C. § 102(e) should be removed.

**VIII. CONCLUSION**

For the reasons stated above, appellant respectfully requests that the Office's rejections be reversed and that claims 1-7, 15, 24, 39, 52, 53, 55, 60 and 61 be allowed.

Respectfully submitted,

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1    **IX. CLAIMS APPENDIX**

2    Claim 1: (previously presented) A method for allowing a first customer to create an individual,  
3    modified motivation or recognition first program having first participants, said first program  
4    permitting the first participants to access the first program via first participant processors and to  
5    earn awards through the first program on the basis of the first participants' performance, said first  
6    program of the first customer operating according to preferences selected by the first customer,

7                said method for allowing a second customer to create an individual, modified motivation  
8    or recognition second program having second participants, said second program permitting the  
9    second participants to access the second program via second participant processors and to earn  
10   awards through the second program on the basis of the second participants' performance, said  
11   second program of the second customer operating according to preferences selected by the  
12   second customer,

13                said method comprising the steps of:

14                allowing the first customer to electronically access via a first customer processor a  
15   browsable catalog of predefined programs stored in a storage device connected to a program  
16   processor;

17                allowing the first customer to electronically select via the first customer processor a first  
18   one of the predefined programs stored in the storage device;

19                allowing the first customer to electronically modify via the first customer processor at  
20   least one component of the selected first predefined program;

21                allowing the first customer to electronically store via the first customer processor the  
22   modified first program in the storage device for access by the first customer;

23                said method further comprising the steps of:

24                allowing the second customer to electronically access via a second customer processor  
25   the browsable catalog of predefined programs stored in the storage device connected to the  
26   program processor;

27                allowing the second customer to electronically select via the second customer processor a  
28   second one of the predefined programs stored in the storage device;

29                allowing the second customer to electronically modify via the second customer processor  
30   at least one component of the selected second predefined program;

31       allowing the second customer to electronically store via the second customer processor  
32   the modified second program in the storage device for access by the second customer;  
33       said method further comprising the steps of:  
34       allowing the first customer to operate the modified first program via the program  
35   processor, and allowing the second customer to operate the modified second program via the  
36   program processor, wherein the first and second participant processors and the first and second  
37   customer processors are remote from said program processor and remote from the storage device  
38   connected to the program processor; and  
39       providing the first customer's participants with access via the first participant processors  
40   to the modified first program stored in the storage device, and providing the second customer's  
41   participants with access via the second participant processors to the modified second program  
42   stored in the storage device, said modified first and second programs executed by the program  
43   processor.  
44  
45   Claim 2: (original) The method of claim 1, wherein awards are earned by each of a group of  
46   participants on the basis of the performance of the group.  
47  
48   Claim 3: (original) The method of claim 1, wherein the awards are award points, and wherein the  
49   providing step comprises the step of electronically providing each customer's participants with  
50   access to a browsable catalog of award items which may be obtained by the participant.  
51  
52   Claim 4: (original) The method of claim 3, further comprising the step of allowing each  
53   customer's participants to electronically redeem the award points for the award items.  
54  
55   Claim 5: (original) The method of claim 3, further comprising the step of allowing each  
56   participant to view data indicating the amount of the award points of such participant.  
57  
58   Claim 6: (original) The method of claim 3, further comprising the step of allowing each  
59   participant to view data indicating transactions by such participant.  
60

61 Claim 7: (original) The method of claim 1, wherein the step of allowing each customer to operate  
62 the modified program further includes the step of allowing a program processor to generate  
63 electronic progress reports for the participants in the modified program indicating program  
64 information.

65

66 Claim 8-14 (canceled).

67

68 Claim 15: (original) The method of claim 1, wherein the browsable catalog of predefined  
69 programs has a plurality of business challenges, and further comprising the step of allowing each  
70 customer to select one of the business challenges to reduce the number of predefined programs  
71 of the browsable catalog which may be selected.

72

73 Claim 16-23 (canceled).

74

75 Claim 24: (previously presented) A system for allowing multiple customers to each create an  
76 individual, modified motivation or recognition program via a customer processor, each said  
77 program having participants, each said program permitting the participants to access their  
78 program via a participant processor and to earn awards through their program on the basis of the  
79 participants' performance, each said program of a particular customer operating according to  
80 preferences selected by the particular customer, said system comprising:

81 a storage device; and

82 a program processor connected to the storage device, said storage device storing a  
83 program for controlling the program processor, said program processor operative with the  
84 program wherein the participant processor and the customer processor are remote from said  
85 program processor and remote from the storage device:

86 to electronically provide to each customer access to a browsable catalog of predefined  
87 programs stored in the storage device, each program associated with a business challenge;

88 to allow each customer to electronically select a business challenge wherein the  
89 predefined programs associated with the business challenge are presented to the customer  
90 wherein the predefined programs are designed to promote the selected business challenge;

91        to allow each customer to electronically select one of the presented predefined programs  
92    stored in the storage device;  
93        to allow each customer to modify at least one component of the selected predefined  
94    program;  
95        to allow each customer to electronically store the modified program in the storage device  
96    for access by such customer;  
97        to allow each customer to electronically create or review a proposal and/or invoice  
98    relating to the modified program;  
99        to allow each customer to operate the modified program; and  
100        to provide each customer's participants with access to the modified program stored in the  
101    storage device, said modified program executed by the program processor.

102

103    Claim 25 - 38 (canceled).

104

105    Claim 39: (previously presented) The method of claim 1, wherein the allowing each customer to  
106    electronically modify includes an award calculator for recommending an award value for one or  
107    more participants responsive to an input salary associated with the one or more participants.

108

109    Claim 40 - 51 (canceled).

110

111    Claim 52: (previously presented) The method of claim 1, further comprising providing each  
112    customer with a notification via the program processor when the modified program requires  
113    operational maintenance.

114

115    Claim 53: (previously presented) The method of claim 24, wherein the customer specifies a  
116    promotion code, and wherein one or more terms associated with the promotion code are applied  
117    the purchase by the customer.

118

119    Claim 54 (canceled).

120

121     Claim 55<sup>2</sup>:: (previously presented) A method for allowing multiple customers to each create an  
122     individual, modified motivation or recognition program having participants, said programs of  
123     said multiple customers supplied by a program supplier, each said program permitting the  
124     participants to access their program via a participant processor and to earn awards through the  
125     program in which they participate on the basis of the participants' performance, each said  
126     program of a particular customer operating according to preferences selected by the particular  
127     customer, said method comprising the steps of:

128         allowing a first customer via a first customer processor and allowing a second customer  
129         via a second customer processor to electronically access a browsable catalog of predefined  
130         programs stored in a storage device connected to a program processor, said storage device and  
131         said program processor being remote from said customer processor and remote from said  
132         participant processor, wherein the first customer's access and program is independent of the  
133         second customer's access and program;

134         allowing the first customer and the second customer to each electronically select one of  
135         the predefined programs stored in the storage device via their customer processor, wherein the  
136         first customer's selection is independent of the second customer's selection;

137         allowing the first customer and the second customer to each electronically select via their  
138         customer processor a rules structure of the selected predefined program, said rules structure  
139         defining the manner in which awards are earned by the first and second customer's participants,  
140         wherein the first customer's modification is independent of the second customer's modification;

141         allowing the first customer to electronically store the first modified program in the  
142         storage device for access by the first customer via the first customer processor;

143         allowing the second customer to electronically store the second modified program in the  
144         storage device for access by the second customer via the second customer processor;

145         allowing the first customer to operate the first modified program via the first customer  
146         processor;

147         allowing the second customer to operate the second modified program via the second  
148         customer processor, wherein the operation of the first modified program is independent of the  
149         second modified program; and

---

<sup>2</sup> Claim 55 is amended in pending Amendment F to provide antecedent basis for the first modified program and the second modified program.

150       providing the first customer's participants with access via their participant processor to  
151   the first modified program stored in the storage device, said modified program executed by the  
152   program processor, the first customer's participants earning awards based on the rules structures  
153   of the first modified program;

154       permitting the second customer's participants with access via their participant processor  
155   to the second modified program stored in the storage device, said modified program executed by  
156   the program processor, the second customer's participants earning awards based on the rules  
157   structures of the second modified program, wherein access by the first customer's participants to  
158   the first modified program is independent of access by the second customer's participants to the  
159   second modified program.

160

161   Claim 56-59 (canceled).

162  
163   Claim 60: (previously presented) The system of claim 24, wherein the business challenges  
164   include one or more of the following: increasing sales and revenue, increasing profit, improving  
165   market share, attracting and retaining employees, improving employee morale, recognizing  
166   service anniversaries, and rewarding project milestones.

167

168   Claim 61<sup>3</sup>:: (previously presented) A method for allowing multiple customers to each create an  
169   individual, modified motivation or recognition program having participants, said programs of  
170   said multiple customers supplied by a program supplier, each said program permitting the  
171   participants to access their program via a participant processor and to earn awards through the  
172   program in which they participate on the basis of the participants' performance, each said  
173   program of a particular customer operating according to preferences selected by the particular  
174   customer, said method comprising the steps of:

175       allowing a first customer via a first customer processor and allowing a second customer  
176   via a second customer processor to electronically select a business challenge from a plurality of  
177   business challenges, each business challenge associated with one or more predefined programs  
178   wherein the predefined programs associated with the business challenge are presented to the

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<sup>3</sup> Claim 61 is amended in pending Amendment F to provide antecedent basis for the first modified program and the second modified program.

179 customer wherein the predefined programs are designed to promote the selected business  
180 challenge ,said predefined programs stored in a storage device connected to a program processor,  
181 said storage device and said program processor being remote from said customer processor and  
182 remote from said participant processor, wherein the first customer's access and program is  
183 independent of the second customer's access and program;

184 allowing the first customer and the second customer to each electronically select one of  
185 the presented predefined programs stored in the storage device via their customer processor,  
186 wherein the first customer's selection is independent of the second customer's selection;

187 allowing the first customer and the second customer to each electronically select via their  
188 customer processor a rules structure of the selected predefined program, said rules structure  
189 defining the manner in which awards are earned by the first and second customer's participants,  
190 wherein the first customer's modification is independent of the second customer's modification;

191 allowing the first customer to electronically store the first modified program in the  
192 storage device for access by the first customer via the first customer processor;

193 allowing the second customer to electronically store the second modified program in the  
194 storage device for access by the second customer via the second customer processor;

195 allowing the first customer to operate the first modified program via the first customer  
196 processor;

197 allowing the second customer to operate the second modified program via the second  
198 customer processor, wherein the operation of the first modified program is independent of the  
199 second modified program; and

200 providing the first customer's participants with access via their participant processor to  
201 the first modified program stored in the storage device, said modified program executed by the  
202 program processor, the first customer's participants earning awards based on the rules structures  
203 of the first modified program;

204 permitting the second customer's participants with access via their participant processor  
205 to the second modified program stored in the storage device, said modified program executed by  
206 the program processor, the second customer's participants earning awards based on the rules  
207 structures of the second modified program, wherein access by the first customer's participants to  
208 the first modified program is independent of access by the second customer's participants to the  
209 second modified program.

**X. EVIDENCE APPENDIX**

None.

**XI. RELATED PROCEEDINGS APPENDIX**

None.